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UNCLAS ANKARA 007033

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SUBJECT: MFA RESPONSE TO USG REQUEST FOR ASSISTANCE ON PFC SMITH

REF: A. A) STATE 299494

[1](#)B. B) ANKARA 6392

[1](#)1. The Embassy recently received a diplomatic note, number 2003/ALGY/442572 from the Ministry of Foreign Affairs regarding Henry Oran Smith (reftels), the dual (American and Turkish) citizen US Marine who deserted while at Incirlik AB on September 29. As anticipated in ref B, the note denies our request for Smith's arrest and return to the US.

[1](#)2. Following is the text of the diplomatic note:

The Ministry of Foreign Affairs of the Republic of Turkey presents its compliments to the Embassy of the United States of America, and referring to its Note No: 1627, dated 23 October 2003 concerning Henry Oran Smith, has the honor to communicate the following:

Henry Oran Smith is a Turkish citizen, registered in Izmir/Seferihisar. Therefore, he is under the protection of the Turkish Constitution and is subject to the Turkish jurisdiction within the territory of the Republic of Turkey. In this regard, in the case of Henry Oran Smith, Turkish authorities have responsibility to apply Article 38 of the Constitution of the Republic of Turkey, which state "...no citizen shall be extradited to a foreign country on account of an offense".

On the other hand, "Treaty on Extradition and Mutual Assistance in Criminal Matter between the Republic of Turkey and the USA" does not provide grounds for extradition of a Turkish Citizen as Article 4(1) of this Treaty clearly states that "neither of the contracting Parties shall be bound to extradite its own nationals....".

Finally, Article VII of the NATO Status of the Forces Agreement (NATO/SOFA) stipulates the rights of the sending State to exercise jurisdiction over persons subject to the military law of that state. Article VII(4) is as follows: "The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State". "Force" is defined by Article I (a) of NATO/SOFA, which reads: "force means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connection with their official duties,".

Since the NATO/SOFA concerns only the foreign "forces" stationed in Turkey within the framework of a NATO duty, contrary to the views of the esteemed Embassy states in its referred Note, Turkish authorities consider that Article VII of the NATO/SOFA cannot be applied in the case of Henry Oran Smith.

The Ministry would like to inform the esteemed Embassy that in the light of these legal considerations, Turkish authorities arrived at the conclusion that it is not possible to provide assistance in returning Henry Oran Smith to the control of U.S. authorities.

The Ministry of Foreign Affairs of the Republic of Turkey avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

October 30, 2003

End text.
EDELMAN